82D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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LIMITING EMPLOYMENT AGENCIES AS TO FEES FOR ASSISTANCE IN SECURING GOVERNMENT EMPLOYMENT

AUGUST 2, 1951.—Referred to the House Calendar and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 15]

The Committee on the Judiciary, to whom was referred the bill (S. 15) to amend section 215 of title 18 of the United States Code, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

1. Page 1, line 5, strike "money or".
2. Page 1, line 6, strike the first "any" and substitute therefor "a".
3. Page 1, lines 6 and 7, strike "any appointive office or place" and substitute therefor "employment".
4. Page 1, line 8, strike "any" and substitute therefor "an"; insert "or" before "agency" and strike the commas after "agency" and "department".
5. Page 1, line 9, strike "or independent establishment"; insert a comma after "States".
6. Page 1, lines 9 and 10, strike "for consideration, or otherwise,".
7. Page 1, line 11, strike "from any person" and "any".
8. Page 2, line 1, strike "appointive office or place under the United States" and substitute therefor "such employment".
9. Page 2, line 3, insert between the period and the close quotation mark the sentence: "This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States."

STATEMENT

The reported bill represents an effort extending over several Congresses to amend the Criminal Code so as to prohibit private employment agencies from soliciting or collecting fees for helping applicants

to obtain employment in any executive department or agency of the United States Government. While existing law penalizes the solicitation or acceptance of any money or thing of value in exchange for the proffer of support or influence in behalf of an applicant for Federal employment, it is doubtful whether it has application to the normal activities of private employment agencies.

The Civil Service Commission, which has long sought such legislation, believes that—

> no American citizen should have to register with an employment agency and no American citizen should have to pay a fee in order to obtain a job with his own Government.

It also points to the existence of certain practices by such employment agencies which have been the source of many complaints.

As the Supreme Court concluded in *Adams* v. *Tanner* (244 U. S. 590), we view private employment agencies as useful adjuncts to the task of providing pools of skilled workmen to American employers. Undoubtedly since those early days much has taken place within the profession to improve the ethical standards and to remove the vicious practices of which the late Mr. Justice Brandeis complained so bitterly in his dissent in that case. Many States have enacted regulatory laws and the Federal Government has created a far-flung system of recruitment offices which operate effectively in gratuitously providing applicants for the great majority of vacancies in Government jobs.

It was, however, persuasively demonstrated to us at public hearings that quite frequently Government agencies request and need the expert assistance of private employment agencies to provide candidates for positions, where the normal Government personnel channels have failed to meet requirements. The author of the companion House measure (H. R. 144) which was before us simultaneously, Hon. Cecil King, Representative from the State of California, was apparently sufficiently impressed with the propriety of such conduct by private employment agencies under such circumstances that he readily agreed to an amendment to his bill which would have exempted from the general prohibition those cases where jobs are filled by private agencies upon the written request of the Government agency concerned. Voluminous letters and telegrams received by the committee from private employment agencies and their Congressmen from all over the country urging such an amendment to the bill, and an absence of telling arguments against it, assisted in determination of the amendment's desirability.

In the course of our consideration of the measure various questions arose for disposition:

The question of constitutionality was suggested, in that an individual's freedom of contract might be impaired. Although the bill would to some extent interfere with the freedom of individuals to earn a livelihood by selling influence, the loss thereby suffered is not such a deprivation as is condemned by the Constitution. Liberty of contract has never been construed to mean liberty to negotiate contracts which are against public policy. The recent decision of *Moffett* v. *Arabian American Oil Co., Inc.* (1949) (85 F. Supp. 174) affords ample confirmation that contracts for the payment of money as a reward for influencing a government to act favorably toward a job seeker are unenforceable in courts of law.

Further question was presented as to the possible conflict between our principal committee amendment to the bill preventing its application to jobs filled by private agencies at Government request, and the oath required of newly appointed civil officers of the United States by section 21a of title 5, United States Code. The oath in question requires such an appointee to swear that—

> neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in consideration or hope of receiving assistance in securing such appointment.

We sought the advice of the Civil Service Commission and of the Department of Justice as to whether the signer of such an oath who had secured his appointment via an introduction by an employment agency would be guilty of perjury. The former replied that he would not, since the function of the employment agency in such cases is not to use influence in securing the applicant his employment, but merely to provide an opportunity for the individual to be considered for the appointment. The Department of Justice felt that the signing of such an oath under these circumstances would be perjurious. The Civil Service Commission took the official view in 1942 that the oath in title 5, United States Code, section 21a, applied only to "officers" as distinguished from employees under decisions of the Comptroller General. Without passing upon the merits of this disagreement, which indeed is not within our province, we suggest that our amend, ment to the bill nonetheless would accomplish a desirable result, and if it would lead to the need for further amendment of the oath provision in title 5, United States Code, section 21a, then the appropriate congressional committee should undertake such legislation.

By virtue of section 01.2 (e) of Executive Order 9830, issued under the authority of section 1753 of the Revised Statutes (5 U. S. C. 631) and the Civil Service Act (22 Stat. 403; 5 U. S. C. 633), the Civil Service Commission may delegate to Government agencies its authority to hire personnel in the competitive service. Agencies can do their own recruiting of candidates for positions excepted from the competitive service. We should think that, if the Commission has experienced difficulty over delegated agencies requesting the recruitment assistance of private employment agencies, then the Commission could control the matter by rescinding the delegation. As to employment beyond the area of the competitive service, then the Government agencies themselves can control abuses by private employment agencies by refraining from their use. We suspect the truth to be that the services of private employment agencies are oftentimes of great value to Government agencies unable to recruit experienced personnel otherwise, and the correction of abuses at all times, under our amendment, would lie with the employer, precisely where it belongs.

Some opposition was voiced that the scope of Government employment contemplated by the bill should include employment by private independent contractors performing contracts with the Government. The Comptroller General advised that such a law might in some instances deny the contractor access to means normally and properly employed in the conduct of its business. Because of this, and because in our opinion such a provision would not only hamper Government contractors but would also remove a legitimate

field of activity from bona fide private employment agencies, the suggestion does not appear sound.

AMENDMENTS

Amendments Nos. 1, 2, 4, 6, 7, and 8 are designed merely to perfect the language and to remove redundancies.

Amendment No. 3, substituting "employment" for "any appointive office or place", is designed to provide a shorter and more descriptive term for a synonymous but ambiguous expression. A former Chairman of the Civil Service Commission, while in office, stated that the words "place" and "employment" were synonymous.

Amendment No. 5, striking "or independent establishment" from its context, is justified not only by the definition in title 28, United States Code, section 451, of the term "agency" (as used in that title) as embracing independent establishments, but also by the provision of title 5, United States Code, section 133z–5, which contains a similar definition and is at least indicative of the general concept of the term. For further reference see volume 31 of the opinions of the Attorney General (p. 406). Apropos of this, it is interesting to note that in the concluding sentence of his March 12, 1951, letter to the chairman of this committee, the Executive Director of the Civil Service Commission stated categorically that the bills did not apply to referrals by private employment agencies of persons to private contractors although such contractors might be working on Government contracts. This assurance should completely dispel the fears of some that the term "independent establishment" would include private contractors for the Government.

Amendment No. 9, which is the principal one, has been heretofore discussed at some length and requires no further treatment.

The following correspondence was received from the United States Civil Service Commission, Department of Justice, and General Accounting Office:

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., February 20, 1951.

Hon. JOS. R. BRYSON,
Chairman, Subcommittee No. 3 of the House Judiciary Committee,
House of Representatives.

DEAR MR. BRYSON: I have your letter of February 9, 1951, with reference to the hearing to be held by your subcommittee on Friday, February 23, 1951, on S. 15 and H. R. 144.

These bills are substantially identical. They provide that any person who solicits or receives money or anything of value in consideration of aiding or assisting any person to obtain appointive office under the United States by referring his name to any executive department, agency, or independent establishment of the United States for consideration or otherwise, or by requiring the payment of fees from any person because such person has secured any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

The Commission is interested in these bills because they are designed to stop a practice about which we have received numerous complaints. The practice in question is that of private employment agencies who solicit and receive fees for alleged assistance in procuring Government jobs for people who have registered with them.

No American citizen should have to register with an employment agency and no American citizen should have to pay a fee in order to obtain a job with his own Government.

The Commission believes that there is a violation of democratic principles inherent in any procedure under which an applicant is required to pay a fee, either directly or indirectly, for securing Federal employment. The Commission has done everything that it could to stop the practice. Whenever we have delegated authority to agencies to do their own recruiting we have instructed them not to use the services of commercial employment offices which charge applicants a fee for placement in Federal employment. Every examination announcement that we have issued for the past several years has contained a notice to applicants that it is not necessary to secure the services of a private employment agency in order to obtain Federal employment. We have, however, succeeded in stopping neither the practice nor the complaints.

Administratively the Commission can do no more. The law as it stands at present applies only to the solicitation or receipt of money or anything of value in consideration of the promise of support or use of influence in obtaining any appointive office or place under the United States. Normally there is no attempt on the part of an employment agency to use any influence to secure appointments. Consequently there is no violation of law as it stands at present. Enactment of amending legislation seems to be the only solution. The Commission is in favor of the proposed legislation.

The foregoing represents the views of the Commission on the two bills which your subcommittee has under consideration. Mr. Charles H. Barnes of the Commission staff will be present at the hearing to answer any questions which may arise. Because of the need of submitting this report promptly, we have not had time to ascertain from the Bureau of the Budget whether this proposed legislation is in accord with the program of the President.

By direction of the Commission:

Sincerely yours,

L. A. MOYER, *Executive Director.*

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., March 12, 1951.

Hon. JOSEPH R. BRYSON,
Chairman, Subcommittee No. 3 of the House Judiciary Committee,
House of Representatives.

DEAR MR. BRYSON: This is in reference to the request made by Mr. Bernhardt of your staff to Mr. Alfred Klein, the Commission's chief law officer, for information as to the meaning of the term "independent establishment of the United States" as used in S. 15 and H. R. 144, which are bills to amend title 18, United States Code, section 215, relating to acceptance or solicitation to obtain appointive public office.

Mr. Bernhardt particularly requested a reference to any statutory interpretation of the term that might have been previously made. So far as we can discover there is none. However, the Attorney General has had occasion to construe the term and his opinion may be found in volume 31 of the Opinions of the Attorney General, beginning at page 406.

The Attorney General was dealing with language used in the act of March 3, 1919, which referred to "positions in the executive departments and in independent governmental establishments." He stated that "the purpose evidently was to include along with the executive departments, whose status had been fixed as above stated, any other independent governmental establishments that may have been created by Congress. Manifestly, this means establishments which are independent of the regular executive departments."

The Commission would interpret the words "executive department, agency, or independent establishment of the United States" as covering all offices in the executive branch of the Federal Government, both departmental and field. The bills would not prohibit referrals by private employment agencies of persons to private contractors although such contractors might be working on Government contracts.

Sincerely yours,

L. A. MOYER, *Executive Director.*

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., April 5, 1951.

Hon. JOSEPH R. BRYSON,
House of Representatives.

DEAR MR. BRYSON: This is in further reference to your request of March 21, 1951, for advice on two questions which have arisen in connection with S. 15 and H. R. 144. Your questions and our views thereon are as follows:

"1. Would it be perjurious for a person to file an affidavit pursuant to 5 United States Code 21 (a) who had paid a fee to an employment agency for securing him a Government job? What are the precise reasons?"

The section of the United States Code referred to provides that each individual appointed after December 11, 1926, as a civil officer of the United States shall file an affidavit stating that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing his appointment. There appears to be no court decision nor administrative ruling on this question you have raised.

Since perjury is a criminal matter, the Commission would not be in a position to give you an authoritative opinion. However, it is our view that the services rendered by an employment agency would not come within the meaning of the statute. The function of an employment agency primarily is to bring the prospective employer and employee together. The individual must then obtain the appointment on the basis of his own merits; that is to say, from that point on it is up to the individual to convince the appointing officer that he is qualified to fill the job. The employing agency does not secure the appointment for the individual. It merely provides an opportunity for the individual to be considered for the appointment. Under these circumstances we doubt that the filing of the affidavit required by 5 United States Code 21 (a) would be perjurious.

"2. The Commission representative who testified at the hearings stated that the Commission delegates recruiting power to Government agencies. What is the statutory source of this power and, if it is withdrawn or withheld, does the agency have any residual power to recruit its help?"

Section 01.2 (e) of Executive Order 9830, which was issued under authority of section 1753 of the Revised Statutes (5 U. S. C. 631), and the Civil Service Act (22 Stat. 403; 5 U. S. C. 633), provides that "The Commission shall, when consistent with law and with the economical and efficient administration of the Government, delegate to the agencies its authority to act in personnel matters in accordance with standards issued by the Commission." Acting under this authority, the Commission establishes boards or committees of examiners in the agencies with authority to recruit and examine applicants for positions in the agencies. In addition, when the Commission has no appropriate register of eligibles, agencies are authorized to recruit and to make temporary or indefinite appointments pending establishment of a register.

When this power is withheld or withdrawn, there remains in the agencies no residual power to recruit for positions in the competitive civil service. Of course, with respect to positions excepted from the competitive service, agencies have authority to do their own recruiting and to make appointments subject to the requirements of the Veterans' Preference Act and the regulations which the Commission has issued thereunder for positions excepted from the competitive service.

Sincerely yours,

ROBERT RAMSPECK, *Chairman.*

DEPARTMENT OF JUSTICE,
April 10, 1951.

Hon. JOSEPH R. BRYSON,
Chairman, Subcommittee No. 3 of the Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the advice of the Department of Justice regarding the legal effect of section 21a of title 5, United States Code, with relation to S. 15 and H. R. 144.

H. R. 144, which is substantially the same as S. 15, provides for amending section 215 of title 18, United States Code, by adding a new subsection reading as follows:

"(b) Whoever solicits or receives any money or thing of value in consideration of aiding or assisting any person to obtain any appointive office or place under the United States, by referring his name to an executive department, agency, or independent establishment of the United States for consideration, or otherwise, or

requires the payment of a fee from any person because such person has secured any appointive office or place under the United States shall be fined not more than $1,000 or imprisoned not more than one year, or both."

Section 21a of title 5, United States Code, provides as follows:

"Each individual appointed after December 11, 1926, as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department, shall, within thirty days after the effective date of his appointment, file with the Comptroller General of the United States an affidavit stating that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing such appointment."

It will be noted that H. R. 144 (as well as S. 15) makes it an offense to solicit, as well as to receive, money or thing of value in consideration of aiding anyone to obtain public office. Section 21a does not make any requirement that the affidavit should include a statement as to solicitation. Otherwise, the things which would be prohibited by the pending bills appear to be comparable to the transactions with respect to which the affidavit must make denial. Therefore, there does not seem to be any inconsistency between the provisions of the bills and section 21a. Each would apply in its particular area without conflict with the other. In fact, they would appear to be complementary. From that standpoint the section and the bills, in their present form, would not present any legal problem.

It is noted that the committee desires similar advice as to the effect of section 21a on the bills in question should they be amended so as to exempt from their application services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States. Such an amendment would, of course, change the situation materially. Under the proposed exception the things otherwise prohibited by the bills could be done lawfully but under the same circumstances the Government employee who happens to find employment in a department or agency of the Government as a result of the services rendered by an employment agency at the request of an executive department or agency would be required to make affidavit that he had not paid anything to obtain his office. It does not seem that the exception mentioned, standing alone, would change the requirements of section 21a. To the extent that the exception would be operative, the bill and the section would be in conflict. In view of this fact, it is difficult to envisage the workability of such an exception unless, of course, additional legislation were enacted to effectuate a complementary exception in section 21a.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

GENERAL ACCOUNTING OFFICE,
COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, May 18, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of May 5, 1951, acknowledged by telephone May 9, concerning provisions of S. 15, Eighty-second Congress, which, as proposed to be modified by your committee, would amend 18 United States Code 215, to make it a criminal offense for anyone to solicit or receive anything of value in consideration of aiding a person to obtain employment by the United States, either by referring his name to an executive department or agency or by requiring payment of a fee because he has received such employment, unless such services were furnished pursuant to the written request of the department or agency concerned.

You advise that the committee recently has ordered the bill reported, but that an official report has been withheld from filing pending consideration of views expressed in correspondence, from the Construction Men's Association to Senator McCarran, dated March 9 and April 16, 1951. Such correspondence was transmitted with your letter and in it the association urges that the prohibitions of the bill be extended to cover private employment agencies securing jobs for individuals with concerns having Federal construction contracts, particularly large construction contracts outside the United States.

I appreciate the opportunity to comment upon S. 15 and the possible extension of its presently proposed provisions. However, while I feel that legislation

to correct the practice of charging fees for Federal employment is very desirable and definitely would be in the public interest, at this time there is not available in the General Accounting Office any special information with respect to unnecessary or improper use of private employment agencies by Government construction contractors. The few individual cases which have come to attention do not afford sufficient information upon which fairly to base conclusions either with respect to the existence or extent of the practice or the need for corrective action. The corrective action urged by the Association might in some instances deny the contractor access to means normally and properly employed in the conduct of its business, and it seems evident, therefore, that such action should be taken only if necessary.

I regret that I am unable to furnish a more comprehensive response in the matter at this time.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

CHANGES IN EXISTING LAW MADE BY BILL AS REFERRED TO COMMITTEE

In compliance with clause 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as referred to the committee are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

§ 215. Acceptance or solicitation to obtain public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever solicits or receives any money or thing of value in consideration of aiding any person to obtain any appointive office or place under the United States either by referring his name to any executive department, agency, or independent establishment of the United States for consideration, or otherwise, or by requiring the payment of a fee from any person because such person has secured any appointive office or place under the United States shall be fined not more than $1,000, or imprisoned not more than one year, or both.

CHANGES IN EXISTING LAW MADE BY BILL AS REPORTED BY COMMITTEE

In compliance with clause 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported by the committee are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

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Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States, or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

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